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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,157	07/12/2004	Guy Borgeat	AP020-04	5350
29689	7590	05/05/2005	EXAMINER	
DAVID A. GUERRA 933 OLANDER WAY SOUTH, SUITE 3 SOUTH PASADENA, FL 33707			KOCH, GEORGE R	
			ART UNIT	PAPER NUMBER
			1734	

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/501,157

Applicant(s)

BORGAT, GUY

Examiner

George R. Koch III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☒ Claim(s) 1 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 July 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/12/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 22 (visible in Figure 2) and 31 (visible in Figure 3b). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

2. Claim 1 is objected to because of the following informalities: The claim appears to be an automated translation of the French priority claim and lacks grammatical consistency. As one example, three different terms are used to refer to the same structure (item 3) in the claims. As another example, applicant interchangeably uses

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"tubular film" and "film" to refer to the same structure. Additionally, applicant repeatedly uses the phrase "that is to say", which appears to be unnecessary and confusing.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 1 recites the limitation "the spacing means" in line 6. There is insufficient antecedent basis for this limitation in the claim. It appears that the spacing means are the same as the "means provided inside said tubular film".

6. Claim 1 recites the limitation "said means to prevent air escaping" in line 5. There is insufficient antecedent basis for this limitation in the claim. It appears that these means are the same as the "said means to prevent air from escaping".

7. Claim 1 recites the limitation "the means for pulling the film" in line 8. There is insufficient antecedent basis for this limitation in the claim. It appears that the spacing means are the same as the "traction means for pulling the tubular film".

8. Claim 1 recites the limitation "the hollow needle" in line 9. There is insufficient antecedent basis for this limitation in the claim.

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***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moreillon (WO 99/61232) in view of Luhman (US 3,938,298).

Moreillon discloses a machine (see Figure 1) for making air cushions for packaging from a tubular film (item 1) comprising means provided inside (3) said tubular film to separate the walls thereof, traction means (8) for pulling the tubular film and an inflating and welding device (items 5, 6, 7, and 12) having at least one hollow needle (5) for inflation, means (item 2) to prevent air from escaping upstream towards the reel. Moreillon discloses that the means to prevent the air from escaping (item 2) are located between the means provided in the tubular film to separate the walls of the film (item 3) and the reel, and the inflating and welding device (items 5, 6, 7) are located after the means provided inside (3) said tubular film to separate the walls thereof and before the

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traction means. Moreillon discloses that the hollow needle (item 5) is attached to the first beam (item 12) and operated by a first actuator (item 13). Moreillon discloses two heating elements (item 6) placed upstream and downstream of the needle, attached to a second beam (item 10) and operated by a second actuator (item 11).

However, Moreillon does not disclose a frame or that the means for preventing the escape of air comprise an elongated element extending in a transverse direction attached to the first beam in such a way as to be held away from the film while the latter is being moved and introduced into a recess provided in a plate on the frame of the machine to force the film into the recess to form a sealed fold in the latter.

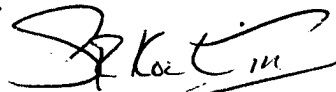
Luhman discloses similar means for preventing the escape of air comprise an elongated element (Figure 7, item 83) extending in a transverse direction attached to the first beam (pressing plate 80) and in such a way as to be held away from the film while the latter is being moved and introduced into a recess provided in a plate (item 81, see Figure 4) on the frame of the machine to force the film into the recess to form a sealed fold in the latter. One in the art would appreciate that such an element ensures proper pressing and formation of the air cushion. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use such means in order to improve pressing and formation of the air cushion.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R. Koch III whose telephone number is (571) 272-1230. The examiner can normally be reached on M-Th 10-7.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



George R. Koch III  
Patent Examiner  
Art Unit 1734

GRK  
5/1/2005